



PALM BEACH COUNTY BAR ASSOCIATION BULLE^TIN

www.palmbeachbar.org

September 2015

Mark Your Calendars

Please note the following two upcoming investiture ceremonies:



Judge Scott Suskauer
Friday, September 25
4:00 p.m.
PBC Courthouse,
Courtroom 11A



Judge Dina Keever
Friday, October 23
4:00 p.m.
PBC Courthouse,
Courtroom 11A

YLS Fishing Tournament Raises Funds for Legal Aid

The Fifth Annual YLS Fishing Tournament raised over \$11,000 for Legal Aid's Educational Advocacy Project. Over twenty-two boats participated in the tournament and a dock party was held immediately afterwards. A big thank you to the Palm Beach Yacht Club for again hosting our tournament! For more photos from the day, please see page 13.



Mark your calendar for upcoming Membership Events

September 22:

Membership Luncheon with guest speakers Florida Bar President Ramon Abadin and Immediate Past Florida Bar President Greg Coleman "The Future of the Practice of Law: Challenges and Opportunities"

November 5:

Membership Open House – Food Truck Lunch, Networking and Vendors to Help Grow Your Practice

December 10:

Annual Holiday Party and Silent Auction

February 19:

Bench Bar Conference

Florida Bar Leadership Town Hall Meeting September 22



There has been significant media attention lately regarding the issue of admission by motion/reciprocity in Florida. No action has been taken by The Florida Bar, but there are many questions from our members on this issue. The PBCBA will be hosting a town hall membership luncheon featuring the president of The Florida Bar, Ray Abadin, and immediate past president, Greg Coleman. Together they will discuss this



important issue in addition to others being studied by Vision 2016 which include legal education, technology, and access to legal services. These issues will affect YOUR practice. Please be sure to register early for this luncheon as space is limited. The meeting will be held on **September 22** beginning at 11:45 a.m. at the Marriott West Palm Beach.

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THE
BULLETIN
PALM BEACH COUNTY
BAR ASSOCIATION

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The mission of the Palm Beach County Bar Association is to serve its members, foster professionalism and enhance the public's understanding and awareness of the legal system.

LETTERS TO THE EDITOR

The Palm Beach County Bar Association Bulletin welcomes your comments on topics relating to the law, the legal profession, the Palm Beach County Bar Association or the Bar Bulletin. Letters must be signed, but names will be withheld upon request. The editor reserves right to condense.



Send letters to:
EDITOR Bar Bulletin
Palm Beach County Bar Association
1507 Belvedere Road
West Palm Beach, FL 33406

North County Section to host annual

MEMBERSHIP APPRECIATION MIXER:

FREE to all Section members!

Thursday, September 24
5:30 p.m. to 7:00 p.m.

Ill Forks, 4645 PGA Blvd in Palm Beach Gardens

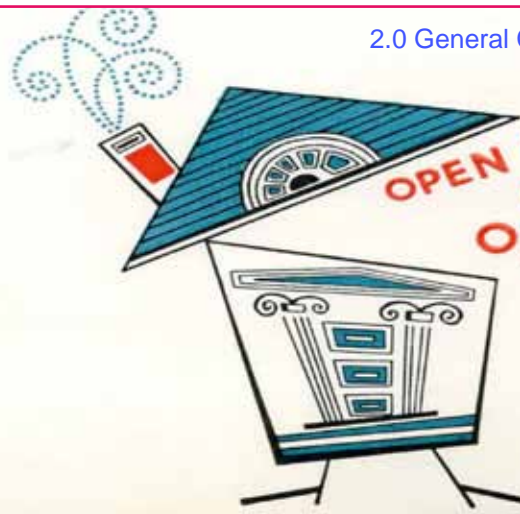
NCS Members & Judges – FREE!

Attorneys who are not NCS members - \$35.00

RSVP online @ www.palmbeachbar.org

Sponsored by Esquire Bank, Visual Evidence and Alpine Jaguar

2.0 General CLE Hours Available for this event



At The Bar Office!
Thursday, November 5
11:30 a.m. to 1:30 p.m.

Stop by for lunch, give a ways and information to help grow your practice!
RSVP online today! Further details in next month's Bar Bulletin.



palm beach county
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President's Message



It's the End of the (Lawyer's) World As We Know It... Do You Feel Fine?

by Grier Pressly

It wasn't long ago that working for the postal service offered coveted job security, print journalism was flourishing, Barnes & Noble and Books A Million storefronts were anchor tenants in the most successful shopping centers, and PDAs were the centerpiece of the high tech market. A combination of disruptive technology, consumer demand, and market forces conspired to destabilize these industries.

Is a similar combination of forces about to alter our familiar legal landscape? Is there a lesson to be learned by lawyers from Uber, a business that recognized a market that wasn't being served up to consumer standards and whose sudden emergence has left traditional taxi services reeling? It is difficult to ignore the possibility that today's legal customer is no different than any other consumer who wants goods and services faster, cheaper, and more convenient. If you are like me, you figured that the legal profession was largely immune to the revolutionary change often experienced by other professions and industries. My choice of headline for this President's message should not be interpreted as a prediction that the legal profession is on the road to obsolescence. Rather, it is a lyrical alert that the practice of law in 2020 is likely to look much different than it looks today.

Vision 2016 is a comprehensive study being conducted by The Florida Bar relating to the future of the legal profession. The study is focused on four primary areas of our profession: technology, access to justice, bar admissions, and law schools. I am going to run through some staggering facts, statistics and reports that have already come out of the Vision 2016 study. Please ask yourself how the following could impact, or are already impacting, your own law practice and our profession:

- Cross-border practice: The Vision 2016 committee on bar admissions recently presented its report on admission on motion/reciprocity to the Board of

Governors. The committee report, in part, recommended that out-of-state lawyers in good standing in their home state who have practiced five out of the last seven years be permitted to apply to become a member of The Florida Bar without taking the Florida bar exam. The Florida Bar has not yet taken a position on the issue and is welcoming members of the Bar to join in the dialogue by submitting comments. Comments may be sent by e-mail to visionbaradmissions@flabar.org.

- Irrespective of the outcome of the admission on motion movement, there are already 17 states using the Uniform Bar Exam, including most recently, New York. With New York adopting the UBE (effective 2016), can the rest of the Northeast, and Florida, be far behind? California is currently considering moving to the UBE as well.
- Unbundled legal services: In June, The Florida Bar Rules of Judicial Administration Committee approved an amendment to R. Jud. Admin. 2.505 that for the first time contemplates a lawyer providing unbundled services through the creation of a "limited representation counsel." The purpose is to facilitate broader access to legal services for those litigants who do not need or cannot afford a lawyer for an entire legal proceeding. The proposed rule amendment is headed to the Board of Governors for recommendation. A draft of the new proposed rule can be found at The Florida Bar's website.
- Unlicensed practice of law concerns are being trumped by the need to help the underserved legal consumer in other jurisdictions. Washington state just approved (over the Washington state bar's vehement objection) a "super-paralegal" called a Limited License Legal Technician, who is a licensed non-lawyer authorized to provide limited, defined legal services at a fraction of the cost of a lawyer. New York has commenced its own similar pilot program, and California is considering it as well. The ABA

has formed a task force to analyze the merits of this concept. Could the "super-paralegal" come to our state?

- There is a movement afoot to permit alternative business structures that combine legal and non-legal service providers. These multi-disciplinary practices are already thriving in the UK. Imagine a one-stop shop for a divorce litigant, "Family Law LLP," a partnership comprised of lawyers, psychologists, and forensic accountants who share fees? Or the local funeral home that partners with probate lawyers?
- Only 64% of recent law school graduates found employment in jobs that require the passage of the Bar exam.
- Projected attorney job growth is 35% lower than overall job growth.
- An estimated 60% of our state citizenry cannot afford a lawyer to address their legal need, and do not qualify for Legal Aid.
- Nationally, the underserved legal market is valued at \$45 BILLION, and venture capital is pouring into non-legal businesses to occupy this market space.
- 85% of family law cases involve at least one pro se party because divorcing parties are often "priced out" of the legal market.
- Less than 15% of small businesses use a lawyer.
- Never has legal information been more accessible. Our legal customers can now find the law that controls their case on their personal computer through free providers like "Google Scholar".
- There are nearly 20,000,000 results for a "buy legal forms Florida" Google search.
- In some states, more than 20% of the LLCs formed last year were formed using LegalZoom.
- Avvo, an online "matching site" for lawyers and clients owned by non-lawyers, generates more legal revenues than the top three Am Law 100 firms combined, and more than 20,000 Florida lawyers are already doing business on Avvo.

These are big, big issues facing our

Continued on page 4

CLE Seminar Live registration v. Webinar registration... A tutorial

The Palm Beach County Bar Association is very pleased that during the last few years it has offered our members the opportunity to attend seminars in-person as well as by webinar. The demand for the webinars has increased during the past year, however registering procedures for the webinars versus registering to attend in-person is experiencing growing pains.

Registration and payment for webinars is handled by a third party, **mylawcle**. Registration for in-person seminars continues to be handled through the Palm Beach County Bar Association.

Webinar registration procedures at palmbeachbar.org:

Click:

- Membership/CLE on the home page
- Continuing Legal Education
- Scroll down to "Webinars" and click on the link
- Click on seminar in which you wish to register
- Under Tuition – **Live Video Webinars** means you can watch seminar in real time. (You will receive an e-mail confirmation shortly after you complete the registration with log-in directions) **On-demand Videos** means that the webinar will be sent via e-mail 7 days after the original recording.

In-Person registration procedures at palmbeachbar.org:

Click:

- Membership/CLE on the home page
- See list of *Upcoming Live Seminars*
- Click on corresponding date of CLE on Calendar of Events off to the right hand side of the page

Switching registration from in-person to webinar and vice versa

If after registering to attend a seminar in-person and you decide that you would like to attend via webinar, you need to cancel your webinar registration, through our third party administrator, mylawCLE at (888) 449-2512 and then re-register through the Palm Beach County Bar Association to attend in person. Likewise, if you registered for the in-person seminar and decide to attend via webinar, please cancel through the Palm Beach County Bar Association and re-register online for the webinar.

Green and Orange registration buttons

Also, when receiving e-mails regarding upcoming seminars, be sure to look for the green and orange buttons that bring you to the correct registration page. The green button allows you to register to attend in person and the orange button brings you to the page to register for the webinar (live or on-demand).

It's the end of the world...

Continued from page 3

profession. Fortunately, our Bar leaders at the state level are intent to keep Florida lawyers ahead of the curve, but they recognize that it will be the job of the local Bar Associations to effectively spread the message of the once-in-a-generation change we are about to experience in the way legal services are delivered. I want our members to be the most educated in the state when it comes to these new challenges and opportunities. For that reason, I have invited Florida Bar president Ray Abadin and immediate past president Greg Coleman to address our membership at the membership luncheon on September 22. Ray and Greg have been on the front lines of the Vision 2016 study and you will not want to miss their presentation. I promise that you will leave the luncheon with opened eyes and informed minds. As lawyers, we must be knowledgeable about what is coming before we can adapt and find opportunity in change. Ray and Greg have also tutored me on the subject, so during the course of the Bar year, please don't hesitate to contact me if you have questions about these issues or would like me to address your firm or association.

As my favorite college band, R.E.M., once proclaimed: "It's the end of the world as we know it, and I feel fine." How do you feel about the wave of change coming to our profession? I hope to see you at our membership luncheon in September.

Phone: (561) 659-4040

E-Mail: gpressly@presslyandpressly.com



Find Colleagues Online!

PBCBA Online Membership Directory

Always available – always current!

Easy to access (members only)

If your information is incorrect or you'd like to update your photo, please send information to sspence@palmbeachbar.org

UPCOMING CLE SEMINARS

Bankruptcy Law
Friday, September 25

Technology Seminar
Tuesday, November 3

Personal Injury Seminar
Thursday, November 12

Family Law Seminar
Friday, November 13

Work Comp Seminar
Thursday, November 19

Homeowner Association Law Seminar
Friday, December 4

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Amended Local Rule 4 - How Does it Change Motion Practice in the 15th Judicial Circuit?



*by Judge Peter Blanc
and
Amy Borman,
Esquire*

History and Purpose of Local Rule 4

Local Rule 4 has been part of the Palm Beach County legal practice since Judge Daniel T. K. Hurley was the Chief Judge back in 1991. Since 1991, Local Rule 4 has required that prior to setting a motion on Uniform Motion Calendar (UMC) in the Circuit Civil, Family, Foreclosure and Probate Divisions, "the attorney noticing the motion for hearing shall attempt to resolve the matter and shall certify the good faith attempt to resolve." The intent was to have attorneys attempt to resolve matters without judicial intervention. An improper practice, however, later emerged where a perfunctory certification often would be inserted in the notice of hearing stating that the attorney "has attempted or will attempt" to resolve the matter prior to the hearing. Indeed, this practice was contrary to the local rule which required the attempt to be made **before** setting the hearing. Because the spirit and intent of Local Rule 4 has been lost over the years, attorneys and judges recently began to look at amending the rule to ensure that good faith attempts were actually made and better served the purpose of the rule.

The Key Changes in Amended Local Rule 4

Local Rule 4, as amended, now requires attorneys to make "**reasonable efforts to actually speak to one another (in person or via telephone)**" and engage in reasonable compromises in a genuine effort to resolve or narrow disputes **before** seeking court intervention. "(Emphasis added). The amended rule also requires specific certification of compliance in the notice of hearing using one of two non-modifiable options as follows:

_____ Counsel has conferred with all parties who may be affected by the relief sought in the motion in a good faith effort to resolve or narrow the issues raised.

_____ Counsel has made reasonable efforts to confer with all parties who may be affected the relief sought in the motion but has been unable to do so.

The requirement of a good faith effort to speak to each other in person

or by telephone is a result of many attorneys falling into the bad habit of scheduling - and often attending UMC hearings - before even attempting to speak to opposing counsel about the issue the motion addresses. The current all too common practice of exchanging emails which contain unilateral demands is a poor substitute for actual good-faith communication. Email exchanges are still permitted between counsel in an effort to resolve or narrow issues, but if they are unsuccessful, counsel now has a duty to attempt to speak to opposing counsel in person or by telephone prior to scheduling the matter for UMC. Equally important, opposing counsel has the duty to respond as well.

Another important change in Local Rule 4 is that the rule now expressly incorporates the Standards of Professional Courtesy and Civility that have been endorsed by the judges of the Fifteenth Judicial Circuit, including but not limited to the requirement for five business days' notice when setting a motion for UMC.

The judges in the Circuit Civil, Family, Foreclosure and Probate divisions have a limited amount of time within which to prepare for and conduct hearings and trials. Compliance with this rule should reduce the number of UMC hearings which will allow the Judges more time to prepare for the truly necessary hearings and allow all properly noticed UMC hearings to be heard.

The goal of the amendment to Local Rule 4 is not to make motion practice more difficult for attorneys. It is to make attorneys more effective and efficient on behalf of their clients and to reduce unnecessary judicial labor.

Counsel should be in the habit of actually speaking to each other (beyond email) even without the requirements of this rule. Such communication promotes settlement and effective resolution of civil disputes. It also greatly enhances the civility and professionalism of the members of the local bar.

It is no coincidence that the best and the most experienced lawyers rarely are seen at UMC. It is not simply because partners send their associates to cover these hearings. It is because the best and experienced lawyers know and understand the value of communication with opposing counsel and that only important

matters material to their case should be set for hearing. The value in attempting to resolve issues by lawyers talking is the narrowing of issues and potentially the elimination of unnecessary hearings. This is ordinarily a time savings for lawyers and a fees and costs savings for clients. More importantly, this type of communication enhances the quality of all our professional lives, and directly results in less hostility and more cooperation among members of the bar.

Conclusion

The new form of certifications in amended Local Rule 4 encourages accountability and compliance by attorneys and provides the court with an initial indication of the level and quality of communication between attorneys. If one of the party's attorneys is not making a good-faith effort to comply, per the amended rule, the court now has additional tools to address the non-compliance.

We encourage all attorneys appearing before the Court to get in the habit of actually speaking with opposing counsel frequently and consistently. Doing so will allow attorneys to discover that better and more frequent communication will improve not only the quality of the practice of law, but also the quality of their professional lives.



Do You Need a Mentor?

The Palm Beach County Bar Association's Mentor Program is designed to provide members with a quick and simple way to obtain advice, ideas, suggestions, or general information from an attorney that is more experienced in a particular area of law. The mentors provide a ten-to-fifteen-minute telephone consultation with a fellow attorney, at no fee. Any member of the Palm Beach County Bar, whether newly admitted or an experienced practitioner, can use the program. Call the Bar office at 687-2800, if you need a Mentor.



AMENDED LOCAL RULE 4 & THE ART OF UNIFORM MOTION CALENDAR

Mark your calendar and join us on **Wednesday, September 16** for this **one hour Lunch & Learn** program with **Circuit Judge Peter Blanc** along with attorneys Greg Goleman, Immediate Past President of The Florida Bar, and Bonnie Sonneborn as they discuss the advantages of resolving disputes without going to Court. Also, learn the best ways to be successful when a hearing is your only option. Moderated by Michael Gelfand, Esq.



Cost is just \$10.00 and includes lunch, plus **1.5 General CLE** credit from The Florida Bar. Register no later than 5:00 p.m. on September 10 to avoid a \$5.00 late fee.



This program expected to sell out - RSVP!

Date: **Wednesday, September 16, 2015**

Time: **11:45 a.m. to 1:00 p.m.**

Place: **Bar Office
1507 Belvedere Road
West Palm Beach**

Cost: **\$10.00**

RSVP: **www.palmbeachbar.org**

Lunch sponsored by:



**HOW TO
REGISTER**



BY CHECK
Return this
form



BY CREDIT CARD

For security purposes, you must register
online at www.palmbeachbar.org

NCS Summer Happy Hour

Our hot summer nights were cooled down during a recent networking event with members of the North County Section and the Hispanic Bar Association.



HBA President Grace Murillo and Erskine Rogers



Judge Edward Artau, Marjorie Gadarian Graham, Kate Watson and Rafael Roca



Sarah Cortvriend welcomes new NCS member Carol Ellis! Don't know anyone? We'll introduce you!



Dean Xenick and NCS President Larry Buck

Legal Education Programs for the Public

Did you know the Palm Beach County Bar Association has volunteers who present Small Claims Lawsuits and Landlord Tenant programs for the public? These programs are held once a month at various libraries throughout the county and are free! For a list of locations and details, go to the Bar's website at www.palmbeachbar.org and click on the tab "For the Public."

North County Section & FAWL to host **Third Annual Pink Party!**

to benefit

Smiley Wiley Breast Cancer Foundation

Thursday, October 8

5:30 p.m. to 7:00 p.m.

Brio's Tuscan Grill

3101 PGA Boulevard, Palm Beach Gardens

\$25.00 proceeds benefit

Smiley Wiley

Breast Cancer Foundation

Judges are complimentary

RSVP @ www.palmbeachbar.org

WEAR PINK of course!

There will be prizes for the best dressed woman and best dressed man!

Show your support for breast cancer awareness.

Register before 5:00 p.m. on 10/6/15 to avoid a \$5.00 late fee



Is there a movie you want to see?

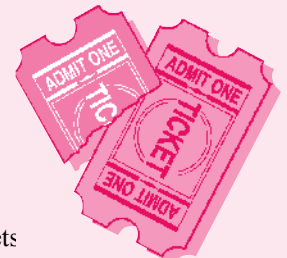
Buy your discounted tickets through the Bar and save at the box office!

The PBCBA has discount movie tickets available for members. Remember, these tickets make great gifts for family, babysitters, staff, clients and teachers. Savings are available for the following theaters:

* **Muvico Theater - \$8.00 each**

* **Regal Theaters - \$8.00 each**

Come by the office and pick up your tickets today (**payment only by check or credit card**). Tickets will only be FedEx'd (not mailed) if member provides us with a FedEx number. **PRICES ARE SUBJECT TO CHANGE**





“Surrender” and Continued Foreclosure Defense

by Jason S. Rigoli

It is common knowledge that a debtor filing for relief under Chapter 7 or Chapter 13 of the Bankruptcy Code must state his intention with respect to secured property. Specifically, a Chapter 7 debtor must state whether he intends to surrender, reaffirm, or redeem property in which a creditor has a secured interest. 11 U.S.C. § 521(a)(2). A debtor filing for relief under Chapter 13 is not required to file a statement of intentions. Instead, the Chapter 13 debtor must propose a plan which declares his intention to surrender, reaffirm, or redeem any secured property in his possession. 11 U.S.C. § 1325(a)(5)(C). While this is straight-forward, a question arises as to what the term “surrender” actually means as “surrender” is not explicitly defined in 11 U.S.C. § 521(a)(2) or elsewhere in the Bankruptcy Code.

Recently, two Florida opinions have been rendered with respect to a debtor’s responsibility if he has stated an intent to “surrender” his secured property.¹ *In*

¹ *Failla* and *Patel* were Chapter 7 bankruptcy cases while *Metzler* was Chapter 13 case.

re Failla, –B.R.–, 2014 WL 8663569 (Bankr. S.D.Fla. Dec. 19, 2014) (Hyman, C.J.) and *In re Metzler*, –B.R.–, 2015 WL 2330131 (Bankr. M.D.Fla. May 13, 2015) (Williamson, J.) – jointly decided with *In re Patel*, Case No. 8:13-bk-09736-MGW.

Factually, all three cases involve real property in foreclosure, where the debtors did not challenge the validity of the secured debt. Each debtor indicated that it was his intention to “surrender” the real property. Each debtor also took advantage of Florida’s “wild card” exemption, Fla. Stat. §222.25(4). Even though the debtors stated it was their intention to surrender the real property, each debtor continued to defend or oppose the foreclosure or sale of the real property in state court.

The secured creditors moved to compel the “surrender” of the real property in the bankruptcy court. “The creditors contended that it would be unfair to permit the [d]ebtors to retain the [p]roperty for longer, if not permanently, while the [d]ebtors contest the foreclosure action in the State Court.” *Failla*, at *4. The debtors in

Failla argued that “surrender” as used in Section 521(a)(2) means the debtors were required to surrender the collateral to the trustee, and upon abandonment by the trustee, the property reverted to the debtor, as stated in Section 554(c). *Id.* The debtor in *Metzler* argued that “surrender” as used in 521(a)(2) meant that the collateral would be made available to the secured creditor by dissolving the automatic stay. *Metzler*, at *1.

Both bankruptcy courts found that while “surrender” does not require the physical delivery of the property to the creditor; it does require the debtor to cease the active defense or opposition to the foreclosure or sale of the surrendered property.² The debtor’s continued defense after stating the intention to surrender such collateral could result in the loss of the debtor’s discharge.

This article submitted by Jason S. Rigoli, Furr and Cohen, P.A., One Boca Place, Suite 337W, 2255 Glades Road, Boca Raton, FL 33431, jrigoli@furrcohen.com

² Where the debtor is not challenging the validity of the debt.



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The Bankruptcy Law CLE Committee of the
Palm Beach County Bar Association
presents:

“Individual Chapter 11 Cases - Practice, Procedure and Pitfalls”

Friday, September 25, 2015 - 11:30pm - 6:00pm
PBCBA Offices - 1507 Belvedere Rd., WPB

Program Schedule

- 11:30 am - 11:55 pm **Check In / Late Registration / Lunch**
- 11:55 pm - 12:00 pm **Welcome - Opening Remarks** - Tina M. Talarchyk, Esq.,
The Talarchyk Firm, Bankruptcy CLE Committee Chair
- 12:00 pm - 1:00 pm **Pre-filing Issue to Analyze** - Brad S. Shraiberg, Esq.,
Shraiberg, Ferrara & Landau
- 1:00 pm - 2:00 pm **The Individual Chapter 11 Process: Bumps in the Road** -
Paul L. Orshan, Esq., Orshan, P.A., Board Certified Business Bankruptcy Lawyer
- 2:00 pm - 2:10 pm **Break**
- 2:10 pm - 3:00 pm **Confirming an Individual Chapter 11 Plan** - Brett D. Lieberman, Esq.,
Messana, PA
- 3:00 pm - 3:50 pm **Ethical Considerations** - Tina M. Talarchyk, Esq., The Talarchyk Firm
- 3:50 pm - 4:00 pm **Break**
- 4:00 pm - 5:00 pm **Panel Discussion** - Judge Erik Kimball, Judge Paul Hyman, and seminar
speakers. Moderated by Tina M. Talarchyk, Esq.
- 5:00 pm - 6:00 pm **Reception. Sponsors:** 

This course has been granted 5.5 CLER, including 1.0 Ethics credits/5.5 Business Litigation certification credits from The Florida Bar. The cost of the seminar is **\$ 150** for PBCBA members/paralegals, **\$ 200** for non-PBCBA attorney members/paralegals. **After 9/18/15, add \$10.00 late fee.** **All refund requests must be made no later than 48 hours prior to the date of the seminar.**

___ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

PAYMENT OPTIONS:



If paying by credit card, please go to our secure website to register: www.palmbeachbar.org



Materials will now be emailed to all registrants prior to the seminar



If you can't leave your office, you can attend this via live webinar by registering here <http://www.palmbeachbarcle.org/>. PLEASE NOTE: If you register for the webinar, you cannot attend the live version.



If paying by check, please send payment, along with this form, to the Bar office.

Name: _____

Telephone: _____

Address: _____

City/Zip _____

Email Address: _____

___ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (Bankruptcy Seminar 9/25/15) Cost is the same as listed above, **in addition to \$10 for shipping and handling.**

Palm Beach County Bar Association, 1507 Belvedere Road, West Palm Beach, FL 33406



Caps

by Ted Babbitt

My thanks to Crane Johnston of Schlesinger Law Offices, P.A., Ft. Lauderdale, for an advance copy of the recent decision of the Fourth District Court of Appeals in *North Broward Hospital District, et al. v. Kalitan*, 40 Fla. L. Weekly D1531 (Fla. 4th DCA, July 1, 2015) which was an appeal of a trial court's order reducing a jury verdict in accordance with the caps imposed by Fla. Stat. 766.118. In a wrongful death case, the Florida Supreme Court held that statute unconstitutional in *Estate of McCall v. United States of America*, 134 So. 3d 894 (Fla. 2014).

In the *North Broward Hospital District* case, plaintiff entered the hospital for outpatient surgery to treat carpal tunnel syndrome in her wrist. During anesthesia, it was alleged that her esophagus was perforated during the intubation and a medical nightmare ensued. Despite awakening with excruciating pain, she was sent home only to return a day later on an emergency basis which resulted in her undergoing life-saving surgery to repair her esophagus, a drug induced coma for several weeks, multiple additional surgeries and permanent physical and mental disability.

The issue in *North Broward*, *supra*, was whether *McCall*, which found Fla. Stat. 766.118 unconstitutional in a wrongful death case, mandated its being held unconstitutional in a single personal injury action.

In *McCall*, *supra*, the Court applied the rational basis test to determine whether the statute was unconstitutional under the equal protection clause of the Florida Constitution. The rational basis test requires a Court to determine whether a statute bears a rational basis to a reasonable State interest. In *McCall*, *supra*, the Court answered that question in the negative both because the supposed medical malpractice crises that was the basis for imposing caps on damages no longer existed, if it ever existed in the first place, and also because a cap on wrongful death noneconomic damages imposes an unfair and illogical burden when medical negligence impacts multiple claimants. The *McCall* case relied upon *St. Mary's Hospital v. Phillipe*, 769 So. 2d 961 (Fla. 2000) which held unconstitutional a cap of \$250,000.00 applied in the aggregate regardless of the number of survivors that existed in a wrongful death action. *Phillipe* held that an application of damages in the aggregate violated the equal protection provision of the Florida Constitution and applied the cap individually to each survivor.

In *North Broward Hospital District*, *supra*, the issue of constitutionality was more broadly stated than in *McCall* since it did not involve multiple plaintiffs and the question was rather whether placing a cap on a plaintiff's individual damages also violated the constitution's equal protection guarantee because it treated the plaintiff differently than other similarly situated plaintiffs. The Court found Fla. Stat. 766.118 unconstitutional in all cases. At 1533, the Court held:

Although *McCall*'s plurality and concurring opinions specifically addressed only the caps on noneconomic

damages awarded to survivors in wrongful death actions, section 766.118 applies to both personal injury and wrongful death actions. *See* § 766.118(2)(a), Fla. Stat. (2011). Because addressing the medical malpractice crisis was the Legislature's stated objective when passing section 766.118, if the objective no longer exists, then there is no longer a "legitimate state objective" to which the caps could "rational[ly] and reasonabl[y] relat[e]." *McCall*, 134 So. 3d at 901. Per the *McCall* plurality and concurring opinions, we are compelled to conclude that section 766.118 presently lacks a rational and reasonable relation to any state objective, and thus fails both the concurring opinion's "smell test" as well as the rational basis test. *Id.* at 920 (Pariente, J., concurring).

Therefore, adhering to *McCall*, the section 766.118 caps are unconstitutional not only in wrongful death actions, but also in personal injury suits as they violate equal protection. It makes no difference that the caps apply horizontally to multiple claimants in a wrongful death case (as in *McCall*) or vertically to a single claimant in a personal injury case who suffers noneconomic damages in excess of the caps (as in the case here). Whereas the caps on noneconomic damages in section 766.118 fully compensate those individuals with noneconomic damages in an amount that falls below the caps, injured parties with noneconomic damages in excess of the caps are not fully compensated.

In *North Broward Hospital District*, Defendants also raised the question as to whether the *McCall* opinion should be applied retroactively or only prospectively. The Court in *North Broward Hospital District* held that only the Florida Supreme Court had the power to determine that its opinions apply retrospectively and absent such holding found that the Courts of Florida are bound by the opinion in *McCall* at the time a decision is rendered. At 1534, the Court held:

Here, the Supreme Court in *McCall* did not limit its holding to prospective application. Moreover, the Fifth District Court of Appeal recently withdrew its opinion in a wrongful death case for the purpose of applying *McCall* retroactively. *Shoemaker v. Sliger*, 141 So. 3d 1225 (Fla. 5th DCA 2014).

Finally, Florida's "pipeline rule" requires that "disposition of a case on appeal should be made in accord with the law in effect at the time of the appellate court's decision rather than the law in effect at the time the judgment appealed was rendered." *Hendeles v. Sanford Auto Auction, Inc.*, 364 So. 2d 467, 468 (Fla. 1978); see also Stanley, 610 So. 2d at 541-42. Accordingly, we apply the dictates of *McCall* to the instant case.

This case definitively answers the question of whether the malpractice caps contained in Fla. Stat. 766.118 are constitutional and holds that they are not, applying that rationale to all cases currently extant in the state of Florida.

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Nanny Cams, Recordings, and Other Evidentiary Problems under Florida's Security of Communications; Surveillance Act

by David M. Garten

Everyone knows that nanny cams are legal. What if the nanny cam includes audio? Is the recording admissible? What if the caregiver uses the Ward's home computer for her emails. Can your client use spyware to copy the emails? These are serious questions with potentially serious penalties (civil and criminal) for your client and potential ethical problems for you.

Installation or use of any device for photographing, observing or overhearing events or sounds in a private place without the permission of the person being recorded may be illegal under Florida's Security of Communications; Surveillance Act (Ch. 934, F.S.). A private place is one where a person expects that his communication is not subject to interception, i.e. where privacy is expected. §934.02(2), F.S. The law provides the "most heightened" protection to the privacy interests of individuals in their home. Thus, filming/recording in a home is a risky venture.

The following factors should be considered in determining whether, under the totality of the circumstances, an intercepted oral communication falls within the purview of the Act: (1) the location where the communication took place; (2) the manner in which the communication was made; (3) the nature of the communication; (4) the intent of the speaker asserting Chapter 934 protection at the time the communication was made; (5) the purpose of the communication; (6) the conduct of the speaker; (7) the number of people present; and (8) the contents of the communication. *See, Brugmann v. State*, 117 So. 3d 39 (Fla. 3rd DCA 2013). For example, there is no absolute right of privacy in a party's office or place of business. *See, Cohen Brothers. LLC v. ME Corp., S.A.*, 872 So.2d 321 (Fla. 3d DCA 2004) wherein the court held that members of an LLC's management committee did not have a reasonable expectation of privacy with respect to participation in telephone conference calls with other committee members to discuss continued financing of the LLC, and thus could not hold the committee members liable for recording the conference calls.

I. Silent Video Surveillance: In *Minotty v. Baudo*, 42 So. 3d 824(Fla. 4th DCA 2010, Dr. Minotty received information that caused him to suspect that the dissident shareholders of FEI were planning to remove him from the practice, including setting him up for an arrest. FEI documents were also disappearing from the offices. As a result, Dr. Minotty's private investigator set up hidden security cameras at FEI offices, included the offices of Drs. Todd and Zudans. Although the cameras were equipped with audio as well as video recording, the audio recording never worked and therefore never intercepted any oral communications. The cameras were subsequently removed, but not before video was recorded of the doctors in their offices both alone and

with their patients. The court concluded that silent video surveillance was not covered by the Act.

II. Emails: In *O'Brien v. O'Brien*, 899 So. 2d 1133 (Fla. 5th DCA 2005), the wife, unbeknownst to her husband, installed a spyware program on a computer used by the husband that copied and stored electronic communications between the husband and another woman as they were transmitted. The trial court found that the electronic communications were illegally intercepted in violation of the Act and ordered that they not be admitted in evidence.

III. Audio Recordings: Under the Act, audio records are generally prohibited. §934.03, F.S. However, consent is not required for the taping of a communication uttered by a person who does not have a "reasonable expectation of privacy" in that communication.

IV. Personal Jurisdiction: A tape-recorded telephone call between a nonresident defendant and a Florida resident plaintiff can serve as the basis for personal jurisdiction over the defendant under §48.193(1)(b), F.S. *See, France v. France*, 90 So. 3d 860 (Fla. 5th DCA 2012).

V. Duty to Disclose / Not Work Product: The communication is not work product protected and must be produce in response to a discovery request. *See, Rules Regulating The Florida Bar*, 4-3.4(d) (prohibits intentional failure to comply with legally proper discovery requests); *The Florida Bar v. Hmielewski*, 702 So. 2d 218 (Fla. 1997); Professional Ethics of the Florida Bar, Opinion 07-1, September 7, 2007; *Employment Law Ethics – Surreptitiously Recording Conversations*, American Petroleum Labor Lawyers Association (10/25/12).

VI. Admissibility of Recording: Pursuant to §934.06, F.S., no part of the contents of any wire or oral communication in violation of the Act, and no evidence derived therefrom, may be received in evidence in any trial, hearing, or other proceeding in or before any court.

VII. Ethical Obligation: In Professional Ethics of The Florida Bar, Opinion 07-1, 9/7/07, the inquiring attorney was in possession of certain documents that his client either (1) removed from her husband's office, (2) printed from her husband's computer, including financial documents and emails, or (3) accessed on her own computer with her husband's password. The Florida Bar found that the inquiring attorney has the following ethical obligations:

The inquiring attorney needs to discuss the situation, including the ethical dilemma presented due to the client's actions, with the client. If the client possibly committed a criminal act, it may be prudent to have

Continued on page 11

Rule 1.370: Requests for Admission

by Matt Triggs and Jonathan Galler

Let's admit it. We take some deadlines more seriously than others.

Litigation deadlines, like statutes of limitation? Yeah, those are important. Renewing your subscription to People magazine? Not as much.

How about the deadline for serving answers or objections to Requests for Admission? Not surprisingly, the deadline should be taken quite seriously. Under the language of the rule itself, missing the deadline can give rise to a technical admission.

Rule 1.370(a) provides that "[t]he matter is admitted unless the party to whom the request is directed serves... a written answer or objection addressed to the matter within 30 days..." Moreover, Rule 1.370(b) provides that "[a]ny matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission."

However, the appellate courts are often reluctant to affirm summary judgments based on technical admissions when "the record is replete with evidence to the contrary of the supposed admission." *Sterling v. City of W. Palm Beach*, 595 So. 2d 284, 285 (Fla. 4th DCA 1992). As the Fourth District has held, "[t]he use of admissions obtained through a technicality should not form a basis to preclude adjudication of a legitimate claim." *Id.*

Two recent cases from sister districts illustrate the point. In *Moreland v. The City of Fort Myers*, 164 So. 3d 111, 113 (Fla. 2d DCA 2015), the Second District reversed summary judgment where the movant relied, in part, on the non-movant's technical admissions. "Although a court normally has discretion to rely on a technically deemed admission to support a summary judgment, it is error to do so if the record contains evidence contradicting the admission." *Id.*

Similarly, in *Wells Fargo Bank, N.A. v. Donaldson*, 165 So. 3d 40, 42 (Fla. 3d DCA 2015), the Third District reversed an involuntary dismissal following a non-jury trial "where the record contain[ed] evidence that contradict[ed] Wells Fargo's technical admissions."

Relief from such technical admissions, however, is not necessarily automatic. The rule authorizes the court to grant such relief "on motion," which suggests that the party seeking relief must seek permission to serve belated responses. In practice, though, "[t]he districts differ over the necessity to file a motion to obtain relief from technical admissions occasioned by a failure to respond." *Moreland*, 164 So. 3d at 113.

For example, in an oft-cited opinion, the Fifth District held that a motion must be made to obtain relief from technical admissions. "No motion, no relief, no error." *Morgan v. Thomson*, 427 So. 2d 1134, 1134-35 (Fla. 5th DCA 1983). The Third District, however, has held that a party does not have to file such a motion to obtain relief. *Sher v. Liberty Mut. Ins. Co.*, 557 So. 2d 638, 639 (Fla. 3d DCA 1990).

So where does the Fourth District come out? The answer likely turns on the particular factual circumstances. In *Pelkey v. Commander Motel Corp.*, 510 So. 2d 965, 966 (Fla. 4th DCA 1987), the Fourth District held that "the absence of a motion

does not preclude the trial court from granting relief from admissions resulting from the failure to timely respond to the

request for admissions." However, that same year, the Fourth District declined to relieve a party from its technical admissions based, in part, on the party's failure to file a motion for such relief. *Singer v. Nationwide Mut. Fire Ins. Co.*, 512 So. 2d 1125, 1127 (Fla. 4th DCA 1987) (factually distinguishing *Pelkey*). Without a doubt, the safer course is to file a motion.

In a more recent decision, the Fourth District explained that motions for relief should be liberally granted. "The liberalized version of the rule [since its 1972 amendment] does not require a showing of excusable neglect to permit relief from a technical admission. If the adverse party is not prejudiced, relief may be granted for mere inadvertence. *United Auto. Ins. Co. v. W. Hollywood Pain & Rehab. Ctr.*, 162 So. 3d 98, 100 (Fla. 4th DCA 2014) (internal citations omitted). In that case, the party moving for relief from its technical admission had already filed its answer and its responses to the request for admissions. Thus, the other party could not demonstrate prejudice where it was aware that the party seeking relief denied the matters admitted.

Even with the filing of a motion, though, relief from a technical admission is never a foregone conclusion. "While decisions on the merits are preferred, there is a point at which the opposing party is prejudiced by a tardy request for relief from admissions." *Asset Mgmt. Consultants Of Virginia, Inc. v. City Of Tamarac*, 913 So. 2d 1179, 1181 (Fla. 4th DCA 2005). In *Asset Mgmt. Consultants*, the party seeking relief demonstrated a "lack of any diligence in moving to file belated answers until after the [opposing party]'s motion for summary judgment was heard." *Id.* Moreover, nothing in the record contradicted the technical admissions other than what was filed after the summary judgment hearing, and there appeared to be little to excuse the belated filing.

Under all circumstances, litigation deadlines are to be taken seriously. Practitioners should be mindful of the Fourth District's warning that its policy of liberally granting relief is "not to be construed as a license for indifference and inefficiency." *Wood v. Fortune Ins. Co.*, 453 So. 2d 451, 452 (Fla. 4th DCA 1984). "Hopefully, the individual members of The Florida Bar will be constant in their efforts to run such a tight ship in their respective practices that these breakdowns can be reduced and ultimately eliminated." *Id.*

Matt Triggs is a partner in the litigation department of Proskauer Rose LLP and the head of the department in Boca Raton. Jonathan Galler is a senior counsel in the department. Both concentrate their practices in commercial and probate litigation.

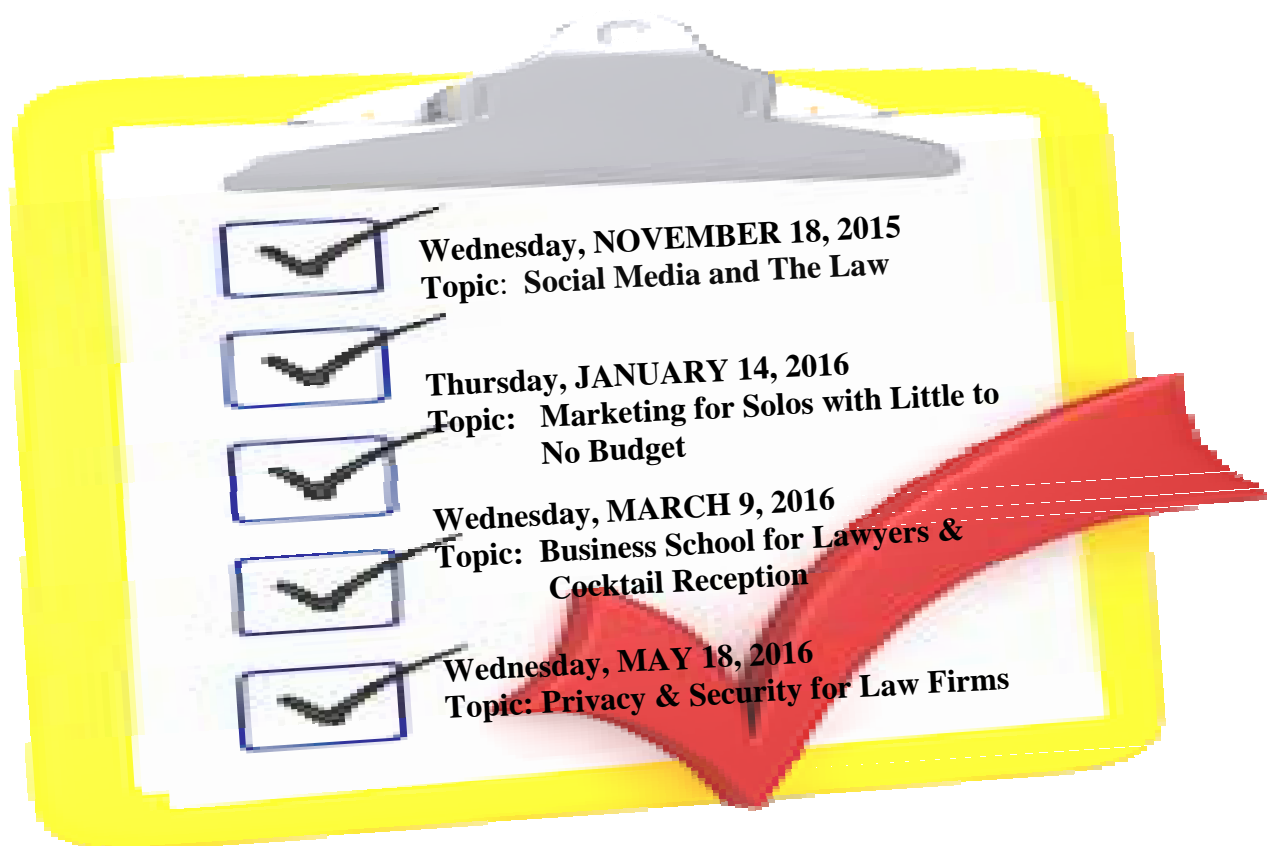


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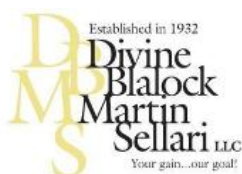
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Judicial Profile: Judge Kirk Volker

by Marilyn Perez-Martinez

Judge Volker obtained his Bachelor's degree from the University of South Florida in Tampa, before attending Stetson University College of Law. Upon graduating, he began working for the State Attorney's Office for the Fifth Judicial Circuit in Bushnell, Florida, for a year, before relocating to a similar position in Palm Beach County. While at the State Attorney's Office in Palm Beach County, Judge Volker litigated numerous cases in the Misdemeanor and Felony Divisions. His diligence and dedication led him to working in the Organized Crime and Habitual Offender Units, as well as being named Chief of one of the Felony Divisions, during his first five-year tenure with Palm Beach County's State Attorney's Office.

The lure of private practice called and Judge Volker took a position with Walton Lantaff Schroeder & Carson in West Palm Beach. He found, however, that being in the courtroom, trying cases on a regular basis was more to his liking. This prompted him to return to the State Attorney's Office where he worked in the Major Crimes and Homicide Units.

Judge Volker took another hiatus from the State Attorney's Office in 1999, and accepted an associate position with the criminal defense firm of Richard G. Lubin, P.A., where he was eventually named Partner, and the law firm became Lubin, Volker & Olea, P.A. Despite enjoying great success in the private sector, Judge Volker found that he once again, missed being in the courtroom on a regular basis, trying cases, prompting him to once again return to the State Attorney's Office.

Upon his return, Judge Volker found himself actively prosecuting cases with the Major Crimes, Homicide, and Special Victims Units. During this ten-year tenure, he served as Chief of Felony and later, took on the role of Chief of Homicide, both testaments to his hard work, his experience and success in trying homicide cases, and his dedication to the victims and the families of deceased victims involved in these cases.

In December of 2014, Judge Volker was appointed to the Circuit Bench by Governor Rick Scott. He currently presides over Juvenile Division "JM" in

the main courthouse and Juvenile Division "JA" in the Belle Glade courthouse.

I first met Judge Volker in March, just a few months after he took the bench. While Judge Volker concedes he was still learning the ropes, he confirmed that he enjoyed practicing law from a different perspective. He finds the lawyers that appear before him on dependency and delinquency matters very professional and very pleasant, making his transition that much more enjoyable. True to his nature, Judge Volker has not slowed down since taking the bench. He continues his diligent work ethic by taking time to read all motions and case law for matters which will be argued before him. Therefore, make sure to provide your case law early and be prepared to argue before a well-informed Judge.

Personally, Judge Volker keeps just as busy as he does professionally. He enjoys going to the gym daily and playing tennis



as often as possible. He enjoys watching action movies, the outdoors, and spending time with his family. He has travelled throughout the United States, Canada and the Caribbean and still enjoys a getaway to Walt Disney World.

Marilyn Perez-Martinez practices Business Litigation in Becker & Poliakoff's West Palm Beach office. Her practice includes representing lenders in loan disputes as well as community associations with covenant enforcement. She can be reached at MPerez-Martinez@bplegal.com or 561-820-2869.

Nanny Cams

Continued from page 9

the client obtain advice from a criminal defense attorney if the inquiring attorney does not practice criminal law. The inquiring attorney should advise the client that the inquiring attorney is subject to disqualification by the court as courts, exercising their supervisory power, may disqualify lawyers who receive or review materials from the other side that are improperly obtained. See, e.g., *Maldonado v. New Jersey, Administrative Office of the Courts – Probation Division*, 225 F.R.D. 120 (D. N.J. 2004). The inquiring attorney should also advise the client that the client is also subject to sanction by the court for her conduct. See *Perna v. Electronic Data Systems, Corporation*, 916 F. Supp 388 (D. N.J. 1995). Finally, the inquiring attorney must inform the client that the materials cannot be retained, reviewed or used without informing the opposing party that the inquiring attorney and client have the documents at issue. See *The Florida Bar v. Hmielewski*, 702 So. 2d 218 (Fla. 1997). If the client refuses to consent to disclosure, the inquiring attorney must withdraw from the representation. See Rule 4-1.16(a)(1).

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12:00 p.m. - 1:00 p.m. **Guest Speaker:** Michael Downey, Visual Evidence

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Welcome New Members!

The following represents each new member's name, law school, and date of admission to The Florida Bar and law firm association.

Kathleen B. Benjamin: Villanova University School of Law, 2015; Associate in Simses and Associates, P.A., Palm Beach.

Sean Michael Clayton: Florida State University, 2008; Solo Practitioner, Ocala.

Katlin Cupp: University of Florida, 2014; Associate in Sellars, Marion & Bachi, P.A., West Palm Beach.

Kari Dahlin: University of Minnesota, 2011; U.S. District Court, West Palm Beach.

Barron Dickinson: Law Student Membership, Tequesta.

Catherine Douglas: University of Florida, 2010; Associate in Akerman LLP, Ft. Lauderdale.

Chris Alan Draper: Boston University, 1989; Partner in Greenspoon Marder, P.A., West Palm Beach.

Ronnie D. Dykes: Nova Southeastern University, 2003; Solo Practitioner, Boca Raton.

Jessica Sylvia Gleiberman: University of Tulsa, 2014; Associate in Chiocca and Chiocca, P.A., Wellington.

Rashida Kennedy: Thomas M. Cooley Law School, 2011; West Palm Beach.

Teresa Krellner: FL Registered Paralegal Membership, Lytal Reiter Smith Ivey & Fronrath, West Palm Beach.

Thomas R. Lamb: Drake University, 2015; Associate in The Weitz Company LLC, Des Moines, IA.

Ryan P McGlynn: Nova Southeastern University, 2014; Office of the State Attorney, Palm Beach County.

Rachel E. Moore: Florida State University, 2015; Associate in Gordon & Doner, P.A., Palm Beach Gardens.

Melvin G. Mosier: Florida A&M University, 2006; Palm Beach County School District.

John E. Mufson: Florida State University, 1981; Solo Practitioner; Delray Beach.

Rhett C. Parker: University of Florida, 2015; Office of the Public Defender, Palm Beach County.

Karina D. Rodrigues: University of Florida, 2014; Associate in Schlesinger Law Offices, Ft. Lauderdale.

John W. Rundell: St. Thomas University, 2015; Associate in Tomberg, Hanson & Halper, LLC, Boynton Beach.

Kathleen M. Savor: Nova Southeastern University, 1998; Palm Beach Clerk and Comptroller's Office.

Matthew Jordan Scheer: University of Florida, 2014; Associate in Gunster, West Palm Beach.

David Marks Sholl: Nova Southeastern University, 2013; Associate in Peterson Bernard, West Palm Beach.

Lawrence A. Silvestri: University of Michigan, 1984; Solo Practitioner; Palm Beach Gardens.

Samantha R. Sobel: Law Student Membership, Jupiter.

David P Vitale, Jr.: Boston College, 2015; Associate in Sweetapple, Broeker & Varkas, Boca Raton.

Matthew S. Waring: University of Florida, 2013; Associate in Cole, Scott & Kissane, P.A., West Palm Beach.

Eric David Yankwitt: Union University, 1992; Solo Practitioner, Lighthouse Point.

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12:05 p.m. - 1:00 p.m. **Speakers:**

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From the Defense: Raymond L. Robin, Esq., Keller Landsberg, P.A.

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Palm Beach County Bar Association's Diversity Internship Program

by Daniel Naydenov, Intern with Shutts & Bowen

It has been another successful summer for the Committee for Diversity and Inclusion's Diversity Internship Program ("DIP"). My personal experience as a DIP intern at Shutts & Bowen, one of Florida's most prestigious law firms, has paved the way for future success by providing an invaluable opportunity to see experienced attorneys in action. Thanks to the DIP, I attended a variety of hearings, observed a mediation, and followed a diverse array of practice areas. I also improved my legal research and writing skills on a daily basis by drafting memorandums, motions, complaints, and revising appellate briefs. Most importantly, I fostered relationships with some of the best lawyers throughout the county and found mentors that care about my legal career. I know that I will begin my second year in law school with significant practical legal experience, all due to this arm of the Palm Beach County Bar Association.

The DIP provided nine, diverse first- and second-year law students with an opportunity to work for local law firms and government agencies. I am most grateful to be one of those nine students. Through the efforts of the Committee for Diversity and Inclusion, the DIP showed law students like me what it is like to be part of the illustrious Palm Beach County legal community. What makes the DIP truly exceptional is the support and lasting relationships it fosters among aspiring lawyers and the local legal community. Through a variety of events, the DIP provides interns the opportunity to develop relationships and learn from seasoned attorneys, both inside and outside the law office.

On June 3rd, the DIP hosted a First Connections Breakfast at the Bar Association Office where former Palm Beach County Bar Association President, Theo Kypreos, welcomed the interns

into the legal community and where my fellow interns were able to meet each other and meet our DIP points of contact. On June 30th, all of the interns enjoyed a delicious lunch at Il Bellagio in City Place, courtesy of McLaughlin & Stern. The lunch allowed fellow interns to get to know one another while sharing our summer experiences.

On July 16th, the interns enjoyed a happy hour at Copper Blues in City Place and received a warm welcome by the PBCBA Young Lawyers Section. It provided an incredible platform for the interns to receive career advice and hear reflections from the legal community.

On July 17th, the DIP hosted a Tips and Tools Workshop at the Palm Beach County Courthouse. Moderator Bradley G. Harper, Esq., with Powers, McNalis, Torres, Teebagy & Luongo and panelists Rosalyn Sia Baker-Barnes, Esq. with Searcy Denney Scarola Barnhart & Shipley, and former DIP interns Krista Downey, Esq. and Shayla Waldon, Esq. were present for the panel discussion about practical information for new lawyers and lent valuable time and expertise to the workshop. The discussion from these professionals offered candid advice on how to maximize our summer experience and to continue to develop as a young lawyer. It was an exceptional opportunity to receive detailed answers from partners and young lawyers addressing the hiring process, interviewing pitfalls, resume building, and steps to law school success.

On August 6th, our DIP experience concluded with a Wrap-Up Reception, hosted by Shutts & Bowen, LLP, to recognize the commitment to diversity of the participating employers and sponsors. The event provided the interns an opportunity to socialize and network with their peers and more legal professionals.

The Committee for Diversity and Inclusion has been gracious enough to invite the interns to attend monthly meetings of various PBC Bar

Association committees. The meetings will continue to provide guidance to interns and young attorneys, while giving us further opportunities to meet lawyers and professionals from a diverse array of practice areas.

The DIP would not be possible without the support of those who hired or sponsored an intern for the summer. The interns and the Committee for Diversity and Inclusion are sincerely grateful to: Cole Scott & Kissane; Gilbert Yarnell; Greenberg Traurig; McLaughlin & Stern; Palm Beach County School District; Powers, McNalis, Torres, Teebagy & Luongo; Searcy, Denney, Scarola, Barnhart & Shipley; Shutts & Bowen; Squire Patton & Boggs; and Village of Wellington. In addition, the interns and the members of the Committee for Diversity and Inclusion thank all of the companies that graciously donated the items included in the DIP Success Kits, given to the interns at the welcome breakfast.

If you would like to contribute and promote diversity within the Bar Association by hiring or sponsoring an intern this upcoming summer, please visit: <http://www.palmbeachbar.org/diversity-internship-program/>.

Daniel Naydenov is a rising 2L at Vanderbilt University Law School. Daniel was born in Bulgaria and currently resides in Palm Beach Gardens. He spent the summer as a diversity intern at Shutts & Bowen, LLP.

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Real Property and Business Litigation Report



by Manuel Farach

TD Bank, N.A. v. Graubard, – So.3d –, 2015 WL 4002478 (Fla. 5th DCA 2015).

A foreclosure judgment sets the “validity, priority and extent of [the] debt, so introduction into evidence of the final judgment of foreclosure is not necessary when a deficiency judgment is entered in the same action as the foreclosure judgment.

Land Co. of Osceola County, LLC v. Genesis Concepts, Inc., – So.3d –, 2015 WL 3999510 (Fla. 4th DCA 2015).

Quantum meruit is not available when the parties enter into an express contract.

San Pedro v. Law Office of Paul Burkhardt, – So.3d –, 2015 WL 4001966 (Fla. 4th DCA 2015).

An order awarding a charging lien must comply with lodestar requirements and set forth the number of hours expended and a reasonable hourly rate.

Wright v. JPMorgan Chase Bank, N.A., – So.3d –, 2015 WL 4002319 (Fla. 4th DCA 2014).

A corporate parent is a different legal entity than its subsidiary, so a parent’s standing to bring suit is not automatically transferred to its subsidiary.

Culverhouse v. Paulson & Co. Inc., – F.3d –, 2015 WL 3953290 (11th Cir.).

The Eleventh Circuit certifies to the Delaware Supreme Court the question of when is a claim direct or derivative in nature for recovery of losses.

Miljkovic v. Shafritz and Dinkin, P.A., – F.3d –, 2015 WL 3956570 (11th Cir. 2015).

Representations made by an attorney in court papers are subject to the requirements and protections of the Fair Debt Collection Practices Act.

Blue Infiniti, LLC v. Wilson, – So. 3d –, 2015 WL 4098895 (Fla. 4th DCA 2015).

A defendant is not a prevailing party if she pays substantially all the lawsuit asked for, and as a result, the lawsuit is voluntarily dismissed by the plaintiff.

Residential Mort. Servicing Corp. v. Winterlakes Property Owners Ass’n, – So. 3d –, 2015 WL 4098868 (Fla. 4th DCA 2015).

An equity of redemption may be assigned to a third party.

Michael Anthony Co. v. Palm Springs Townhomes, – So. 3d –, 2015 WL 4095243 (Fla. 4th DCA 2015).

Contract documents executed at the same time by the same parties for the same transaction and concerning the same subject matter are to be read together. Accordingly, a party cannot enforce one provision of one document (a lease) when it has waived that provision by proceeding to closing under a different document (the purchase and sale agreement) notwithstanding an apparent violation of the lease.

Todd v. Citimortgage, – So. 3d –, 2015 WL 4128864 (Fla. 5th DCA 2015).

An order denying a motion to set aside a default is not an appealable non-final order.

Fischer v. Debrincat, – So. 3d –, 2015 WL 4269259 (Fla. 4th DCA 2015).

The Litigation Privilege does not bar an action for malicious prosecution; conflict certified with *Wolfe v. Foreman*, 128 So. 3d 67 (Fla. 3d DCA 2013).

Reddy v. Zurita, – So. 3d –, 2015 WL 4366570 (Fla. 5th DCA 2015).

A defendant that does not object to plaintiff’s changing his claims (without amending his complaint) cannot argue after judgment (or on appeal) that the claims changed.

St. Clair v. U.S. Bank Nat. Ass’n, – So. 3d –, 2015 WL 4379738 (Fla. 2d DCA 2015).

Under the “shelter rule,” a non-holder in possession may enforce a promissory note it receives from a holder entitled to enforce the note even if the note was transferred to the non-holder without the intention to pass title.

Smith v. Reverse Mortg. Solutions, Inc., – So.3d –, 2015 WL 4257632 (Fla. 3d DCA 2015).

A reverse mortgage may not be foreclosed until the death of all borrowers; a wife who does not sign the promissory note (signed only by husband) but signs the mortgage itself is a “borrower” whose homestead may not be foreclosed until her death.

Peugnero v. Bank of America, N.A., – So.3d –, 2015 WL 4268796 (Fla. 4th DCA 2015).

A loan payment history identified and testified to by a witness (but not admitted into evidence) is not sufficient to support an award of damages as set forth in the statement.

Fairbanks Contracting and Remodeling, Inc. v. Hopcroft, – So.3d –, 2015 WL 4269624 (Fla. 4th DCA 2015).

Forum selection clauses apply to Florida Deceptive and Unfair Trade Practices claims.

Shamrock-Shamrock, Inc. v. City of Daytona Beach, – So.3d –, 2015 WL 4486501 (Fla. 5th DCA 2015).

A trial court’s incorrect interpretation of a municipal code on first stage certiorari review is addressable on second stage certiorari review as a “violation of a clearly established principle of law resulting in the miscarriage of justice.”

Bornstein v. Marcus, – So.3d –, 2015 WL 4461117 (Fla. 4th DCA 2015).

An individual’s complaint seeking credit for a \$50,000 law firm retainer paid by the individual is not a “sham pleading” merely because the \$50,000 was entered as a capital contribution on the financial books of the individual’s company.

Three Lions Const., Inc. v. Namm Group, Inc., – So.3d –, 2015 WL 4464494 (Fla. 3d DCA 2015).

A motion to extend time to accept or reject settlement offer, which offer is not agreed to by the offeror nor granted by the trial court, does not extend the time to accept or reject.



The Palm Beach County Bar Association's Family Law CLE Committee Presents:

IT'S ALL YOUR FAULT, MAYBE NOT...

Friday, November 13, 2015 - 1:00 p.m. – 5:00 p.m.
Bar Association Office - 1507 Belvedere Road, WPB

Program Schedule

This CLE will deal with the challenging issues associated with high conflict family law matters. The concepts of what causes a case to become high conflict will be explored from a practical perspective. Participants will hear from experts who are regularly utilized in family law cases when high conflict issues arise. This CLE will benefit the novice and experienced attorney. This is truly a unique opportunity to learn from family law lawyers who are respected and seasoned in this field as well as high level experts who have a wealth of knowledge in these unique high conflict circumstances. Register early, as seating is limited.

12:30pm - 12:55pm **Late Registration / Check in**

12:55pm - 1:00pm **Welcome and Opening Remarks** - Abigail Beebe, Esq., The Law Office of Abigail Beebe, PA, Family Law CLE Committee Chair

1:00pm - 1:50pm **Liars, Cheaters & Stealers: Criminal Issues that all Family Law Lawyers should know about:** *Martin L. Haines, III, Law Office of Martin L. Haines, III Chartered

1:50pm - 2:35pm **Discovery/Determining Income of Non W-2 spouses** - Matt Smith, CPA; Matthew Stohman, CPA and Joshua Angell, CFA, Moore, Ellrich & Neal, P.A.

2:35pm - 3:10pm **Evaluating Allegations of Child Sexual Abuse in High Conflict Cases** - Dr. Deborah O. Day

3:10pm - 3:20pm **BREAK**

3:20pm - 3:45pm **Divorce and High-Conflict People: Borderlines, Narcissists, Histrionics, Sociopaths and Other Persuasive Blamers** - Dr. Deborah O. Day

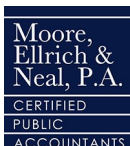
3:45pm - 4:15pm **Ethical Concerns When Navigating through High-Conflict Divorce** - Michael Walsh, Esq., Michael P. Walsh, P.A.

4:15pm - 5:00pm **High Conflict Parties, Opposing Counsel and Other People...Managing Personality Disorders in Family Law Cases** - *Martin L. Haines, III; Judge John L. Phillips and Judge Amy Smith

5:00pm - 6:00pm **HAPPY HOUR**

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This course is expected to receive 4.0 CLER and .5 Ethics credit from The Florida Bar.

Early Registration cost is \$ 75 for PBCBA member/paralegals 0-5 years experience; \$100 for PBCBA members/paralegals w/5+ yrs experience; \$150 for non-PBCBA attorney members/paralegals. **After 11/6/15** add \$25 late fee to registration. **LEGAL AID ATTORNEY cost is \$75.** Legal Aid attorneys should mail their registration to: PBCBA, 1507 Belvedere Rd., WPB., FL 33406.

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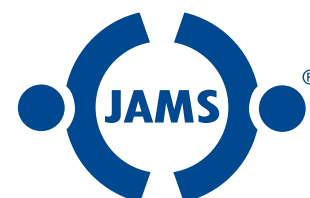
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The Palm Beach County Bar Association's Workers' Compensation CLE Committee Presents:



**2015 Fall Workers' Compensation Seminar -
Carving Out Comp Issues**



**Thursday, November 19, 2015, 12:00p.m. - 6:00p.m.
PBCBA, 1507 Belvedere Road, WPB, FL**

Program Schedule

| | |
|-------------------------|--|
| 12:00 p.m. - 12:20 p.m. | Late Registration / Check in / Lunch |
| 12:20 p.m. - 12:30 p.m. | Welcome & Opening Remarks: Jeffrey Friedman, Esq., Vassallo, Bilotta, Friedman & Davis; Florida Bar Board Certified, Workers' Compensation; Workers' Compensation CLE Chairperson |
| 12:30 p.m. - 1:20 p.m. | Daubert/F.S. 90.702: How, When and Why: Plaintiff and Defense speakers TBA |
| 1:20 p.m. - 2:10 p.m. | Case Law Update: Esther Zapata Ruderman, Esq., Conroy Simberg and Kenneth B. Schwartz, Esq., Florida Bar Board Certified, Workers' Compensation |
| 2:10 p.m. - 2:20 p.m. | Break |
| 2:20 p.m. - 4:10 p.m. | Spinal Injuries: Physician TBA |
| 4:10 p.m. - 5:00 p.m. | Q & A Session/ Judicial Panel - We'll Be the Judge of That! The Honorable Timothy M. Basquill; The Honorable Mary D'Ambrosio and The Honorable Shelly H. Punancy - Moderated by Jeffrey Friedman, Esq. |
| 5:00 p.m. - 6:00 p.m. | Happy Hour |

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This course is expected to received 4.0 credits from The Florida Bar. Early Registration cost is \$100 for PBCBA members/paralegals; \$150 for non-PBCBA attorney members/paralegals if registered by **11/12/15**; add \$15 late fee after that date. All refund requests must be made no later than 48 hours prior to the date of the seminar.

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HEARSAY



Yaffa and Associates welcomes Associate Attorney **Ms. Krystine Espina**. Ms. Espina graduated cum laude from the Florida State University with a Bachelors of Science in Business Management and Minor in Psychology. She earned her law degree from Nova Southeastern University Shepard Broad Law Center.



Denise Bleau, Adam Seligman and Sally Still of Ward Damon, have been selected to leadership roles in various Palm Beach County organizations.



Jones, Foster, Johnston & Stubbs, P.A. announces that **Scott G. Hawkins, John C. Randolph** and **Sidney A. Stubbs** (Hall of Fame) been named Florida's Legal Elite in *Florida Trend* Magazine's July 2015 issue.





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The Florida Association for Women Lawyers (FAWL), Palm Beach County Chapter, announces that it has won The Florida Bar's Award for Excellence in the Promotion of Board Certification for its innovative program entitled "Board Certification Boot Camp." The Boot Camp program focuses on educating women lawyers on the benefits and criteria for becoming Florida Bar Board Certified.

Adam Rabin and **Adrienne Rabinowitz** are the co-chairs of the program.



Super Lawyers Magazine recently published its 2015 selection of Florida Super Lawyers. **Chris Searcy** was included in the list of Top 10 Florida Super Lawyers.



Jim Gustafson was selected as a Top 100 Florida Super Lawyer. The following attorneys were selected as

Florida Super Lawyers: **Jack Scarola, Greg Barnhart, John Shipley, Sia Baker-Barnes, Brian Denney, Brenda Fulmer, Mariano Garcia, Jack Hill, Darryl Lewis, Karen Terry, Cal Warriner, and Laurie Briggs.** Selected by Super Lawyers as 2015 Florida Rising Stars were **Cameron Kennedy, Hardee Bass, Ed Ricci, Matt Schwencke, and Donald Ward.**



Eunice Tall Baros, attorney and mediator in Palm Beach Gardens, has been invited to become a Fellow of the American Bar Foundation,

an honorary organization of lawyers, judges and legal scholars whose public and private careers have "demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession."



Attorney **Joseph S. Karp** has again been named to the Thomson Reuters list of Florida "Super Lawyers."

Mr. Karp focuses his practice in estate planning, elder law and estate administration.

Philippe Jeck was elected as Chairman for 2015-16 and serves on the Board of Directors for the Northern Palm Beach County Chamber of Commerce, Inc. The Chamber encompasses ten municipalities and unincorporated areas in the northern county.

Business Associate Counsel, PLLC, a private corporate law firm, expanded its practice to international law and currently represents clients with matters overseas. **Alicia M. Phidd, Esq.** is the General Counsel and Partner for Business Associate Counsel, PLLC, a Private Law Firm in West Palm Beach, Florida. The law firm has attorneys with licenses for Florida, New York, New Jersey, Pennsylvania, DC, US Virgin Islands and Jamaica.

15 Jones Foster attorneys have been named Florida Super Lawyers: David E. Bowers, Margaret L. Cooper, Tasha Dickinson, Scott G. Hawkins, Thornton M. Henry, Theodore S. Kypreos, Joanne M. O'Connor, Peter A. Sachs, Sidney A. Stubbs, Allen R. Tomlinson, John S. Trimper, Roberto M. Vargas, H. Adams Weaver and Robert W. Wilkins. Rising Stars: Grasford W. Smith



David Steinfeld, Esq. has been appointed as Vice Chair of The Florida Bar's Business Litigation Certification Committee. Mr. Steinfeld has served on the Committee from 2012 to present and will continue to serve for another three-year term.

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PALM BEACH COUNTY BAR ASSOCIATION

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** FLORIDA BAR PRESIDENT
*** DECEASED, FLORIDA BAR PRESIDENT, SUPREME COURT JUSTICE
**** DECEASED, FLORIDA BAR PRESIDENT
***** DECEASED, FLORIDA BAR PRESIDENT, FEDERAL COURT JUDGE

CALENDAR September 2015

Monday, September 7
Labor Day – Court Holiday

Tuesday, September 8,
12 noon
**Circuit Civil Committee
Meeting**
Judicial Conference Room

Tuesday, September 8,
12 noon
**Young Lawyers Section
Board Meeting**
Bar Association Office

Thursday, September 10,
6:30 pm
**Landlord/Tenant Clinic
for the Public**
Gardens Branch Library

Friday, September 11,
8:30 am
ADR Committee Meeting
Bar Association Office

Monday, September 14
**Rosh Hashanah – Court
Holiday**

Tuesday, September 15,
12 noon
**North County Section
Board Meeting**

Wednesday, September 16,
12 noon – 1 pm
**Solo & Small Firm
Practitioner Luncheon
Seminar**
Bar Association Office

Thursday, September 17,
5:30 – 7:00 pm
**Young Lawyers Section
Happy Hour**

Monday, September 21,
5:30 pm
Board of Directors Meeting
Bar Association Office

Tuesday, September 22,
11:45 am – 1:00 pm
**Membership Luncheon
Guest Speakers: FL Bar
President Ramon Abadin
and Immediate Past
President Greg Coleman**
Marriott West Palm Beach

Wednesday, September 23
**Yom Kippur –
Court Holiday**

Thursday, September 24,
5:30 pm
**North County Section
Happy Hour**
III Forks, Palm Beach
Gardens

Friday, September 25,
12 noon – 5:00 pm
**PBCBA Bankruptcy
Law Seminar**
Bar Association Office

Friday, September 25,
4:00 pm
**Investiture Ceremony for
Judge Scott Suskauer**
Palm Beach County
Courthouse, Courtroom 11A

Tuesday, September 29,
5:30 pm
Legal Aid Board Meeting
Bar Association Office